

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 10, 2009 Session

**DAVID S. KARTON, A LAW CORPORATION v.  
WILLIAM RUSSELL DOUGHERTY**

**Appeal from the Chancery Court for Williamson County  
No. 31241 Timothy L. Easter, Chancellor**

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**No. M2008-01478-COA-R3-CV - Filed April 29, 2009**

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David S. Karton (“Plaintiff”) filed this lawsuit in Tennessee seeking to enforce a judgment obtained in California against William Russell Dougherty (“Defendant”). The Trial Court entered an order in April of 2007 granting Plaintiff’s motion to enforce the California judgment. Defendant filed a motion seeking relief from the judgment under Tenn. R. Civ. P. 60 and 62. In May of 2008, the Trial Court entered an order granting Defendant relief from the April 2007 judgment under Tenn. R. Civ. P. 60. Plaintiff appeals to this Court. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. McCLARTY, J., joined.

Donald Capparella, Amy J. Farrar, and John J. Griffin, Jr., Nashville, Tennessee for the Appellant, David S. Karton, A Law Corporation.

Craig V. Gabbert, David P. Cañas, and Kenneth S. Byrd, Nashville, Tennessee for the Appellee, William Russell Dougherty.

## OPINION

### Background

The genesis of the action now before this Court rests upon a default judgment obtained by Plaintiff against Defendant in August of 1999 in Los Angeles, California (“Default Judgment”). Plaintiff, an attorney who had represented Defendant in a marital dissolution action, sued Defendant for allegedly unpaid legal fees and was granted the Default Judgment in the approximate amount of \$86,000. By early October of 1999, Plaintiff had seized approximately \$56,000 of Defendant’s funds in partial satisfaction of the Default Judgment. Defendant subsequently filed seven motions, four of which sought to set aside the Default Judgment. Of those four motions, three never were ruled upon and the fourth was denied without prejudice. Defendant also filed for bankruptcy protection, but was unsuccessful in discharging the debt owed to Plaintiff.

In April of 2003, Plaintiff filed an application in the California court seeking to amend the Default Judgment to add an award of supplemental attorney’s fees incurred in opposing Defendant’s motions and in resisting Defendant’s attempt to discharge the debt in bankruptcy. Plaintiff asserted that, under California law, because the Default Judgment was entered as a default, he was not required to give Defendant notice of subsequent motions. Plaintiff, therefore, gave Defendant no notice of his April 2003 Application to Amend the Default Judgment. The California court granted Plaintiff’s application increasing the principal amount of the Default Judgment to approximately \$349,000 plus interest of approximately \$40,000, with interest continuing to accrue at the rate of \$97.04 per day (“2003 Amended Judgment”).

At some point, Defendant relocated first to Pennsylvania and later to Tennessee. Plaintiff continued to pursue collection efforts against Defendant in Pennsylvania, and Defendant continued to resist those efforts without success. As a result of Plaintiff’s Pennsylvania enforcement proceedings, Defendant entered into an agreement with Plaintiff when Defendant moved to Tennessee to give Plaintiff the proceeds of the sale of Defendant’s Pennsylvania home in partial satisfaction of the judgment. Plaintiff, at one point, estimated that he would receive approximately \$100,000 from the sale of this house to be applied toward his judgment.

In Tennessee, Plaintiff filed this suit to enforce the 2003 Amended Judgment. Plaintiff later was granted leave to amend to substitute an amended judgment that Plaintiff obtained in February 2007 in California (“2007 Amended Judgment”).<sup>1</sup> The 2007 Amended Judgment increased the principal amount of the Default Judgment to approximately \$1,146,000 with interest of approximately \$159,000 as of January of 2007. In April of 2007, the Trial Court entered an Order granting Plaintiff’s motion to enforce the 2007 Amended Judgment. Defendant filed a motion seeking relief from the April 2007 judgment pursuant to Tenn. R. Civ. P. 60 and 62. The Trial Court granted Defendant relief setting aside and vacating its April 2007 Order as to the 2007 Amended

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<sup>1</sup> Plaintiff filed a separate action in Tennessee against Defendant, Defendant’s wife, and others alleging, in part, that Defendant had made fraudulent transfers of assets to avoid the California judgment.

Judgment under Tenn. R. Civ. P. 60 by Order entered May 28, 2008. Plaintiff and Defendant each filed a motion to alter or amend. The Trial Court denied Plaintiff's motion in full and denied Defendant's motion to vacate the 2003 Amended Judgment. Plaintiff appeals to this Court.

### **Discussion**

On appeal, Defendant moved this Court to consider post-judgment facts and to modify the record. Specifically, Defendant asks this Court to consider the post-judgment fact that on February 17, 2009, the California Court of Appeals issued an opinion certified for partial publication with regard to the California judgments at issue in the case now before us. *Karton v. Dougherty*, 171 Cal. App. 4th 133 (Cal. Ct. App. 2009) ("California Opinion"). Defendant also seeks to have the California Opinion included in the record on appeal. Plaintiff does not oppose this motion. We find the motion to be well taken, and it is granted.

The case was before the California Court of Appeals after Defendant appealed the California trial court's denial of his motion for relief from the 2007 Amended Judgment. *Id.* In its very thorough and detailed opinion, the California Court of Appeals found and held, *inter alia*, that Defendant was entitled to notice of Plaintiff's requests for post-judgment attorney's fees and never received such notice. *Id.* at 145-49. Because of this, the California Opinion granted Defendant's motion for relief and vacated the 2007 Amended Judgment. *Id.* The California Opinion further found and held, *inter alia*, that the Default Judgment was void on its face because it granted relief that exceeded what was demanded in the complaint. *Id.* at 149-51. The California Opinion vacated and set aside nunc pro tunc the Default Judgment. *Id.* Further, the California Opinion noted that because it was directing the trial court to enter an order vacating and setting aside the Default Judgment nunc pro tunc, the effect would be to nullify the 2003 Amended Judgment as well. *Id.* at 151 n.18.

As a result of the California Opinion, the Default Judgment, the 2003 Amended Judgment, and the 2007 Amended Judgment no longer exist. Therefore, there no longer exist any California judgments in this case for the Tennessee courts to enforce. Because of the decision of the California Court of Appeals eliminating all three of the California judgments, it is unnecessary for this Court to resolve any of the specific issues raised by Plaintiff as potential errors by the Trial Court. Given this, we affirm the Trial Court's decision.<sup>2</sup>

Defendant requested attorney's fees on appeal. In the exercise of our discretion, we decline to award any attorney's fees.

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<sup>2</sup> "[I]f the Trial Judge reached the right result for the wrong reason, there is no reversible error." *Shutt v. Blount*, 249 S.W.2d 904, 907 (Tenn. 1952). Of course, the Trial Court did not have the benefit of having these post-judgment facts available to it. While we have not made a determination of whether the Trial Court was in error or not as the consideration and application of the post-judgment facts makes such a determination unnecessary, this principle is equally as applicable here as the Trial Court reached the correct result whether it was for the "wrong reason" or not.

### **Conclusion**

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, David S. Karton, A Law Corporation, and its surety.

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D. MICHAEL SWINEY, JUDGE